

NO. 24-10139-F

**In The United States Court Of Appeals
For The Eleventh Circuit**

BRUCE HENRY,

Appellee,

v.

ATTORNEY GENERAL OF THE STATE OF ALABAMA, *ET AL.*

Appellants.

On Appeal from the United States District Court
for the Middle District of Alabama
Northern Division
2:21-cv-0797-RAH

UNOPPOSED MOTION TO EXPEDITE THE APPEAL

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January 31, 2024

CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Cir. R. 26.1, counsel for Plaintiff-Appellee Bruce Henry certifies that the following persons may have an interest in the outcome of this case:

1. Abernathy, Ron (Sheriff of Tuscaloosa County, Alabama) –
 Defendant-Appellant;
2. Agricola, Barbara H. – Counsel for Plaintiff-Appellee Bruce Henry;
3. Agricola, Algert S. Jr. – Counsel for Plaintiff-Appellee Bruce Henry;
4. Albea, Stuart D. – Counsel for Defendant-Appellant Sheriff of
 Tuscaloosa County;
5. Davis, James W. – Counsel for Defendants-Appellants District
 Attorney of Tuscaloosa County and Attorney General of Alabama;
6. Dubbeling, Paul M. – Counsel for Plaintiff-Appellee Bruce Henry;
7. Henry, Bruce – Plaintiff-Appellee;
8. Huffaker, Hon. R. Austin – United States District Judge (Middle
 District of Alabama);
9. LaCour, Edmund Gerard Jr. – Counsel for Defendant-Appellant
 Attorney General of Alabama;

10. Marshall, Steven (Attorney General of Alabama) – Defendant-Appellant and Counsel for Defendants-Appellants District Attorney of Tuscaloosa County and Attorney General of Alabama;
11. McKay, Charles – Counsel for Defendants-Appellants District Attorney of Tuscaloosa County and Attorney General of Alabama;
12. Mink, Richard D. – Counsel for Defendants-Appellants District Attorney of Tuscaloosa County and Attorney General of Alabama;
13. Seiss, Benjamin – Counsel for Defendants-Appellants District Attorney of Tuscaloosa County and Attorney General of Alabama;
14. Webb, Hays (District Attorney of Tuscaloosa County, Alabama) – Defendant-Appellant.

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Respectfully Submitted,

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UNOPPOSED MOTION TO EXPEDITE APPEAL

Comes now Plaintiff-Appellee Bruce Henry, by and through his counsel of record, Algert S. Agricola, Jr. of Agricola Law, LLC, and requests that this Court expedite the appeal in this matter. Defendants-Appellants do not oppose this request or the proposed schedule for briefing and argument contained herein.

Background

This is an action pursuant to 42 U.S.C. § 1983 under which Plaintiff-Appellee Bruce Henry brings a facial challenge to ALA. CODE § 15-20A-11(d)(4) – “which prevents any person convicted of a sex offense involving a child from sharing a residence or spending a night in the same location with a minor, including his or her own children.” See Henry v. Abernathy, Case No. 2:21-cv-797-RAH, 2024 WL 115795 (M.D. Ala. Jan. 10, 2024). At summary judgment, the district court found this statute to be facially invalid and granted Plaintiff-Appellee declaratory and injunctive relief. Id. This district court then stayed that judgment pending appeal. See Henry v. Abernathy, Case No. 2:21-cv-797-RAH, 2024 WL 203957 (M.D. Ala. Jan. 18, 2024).

Defendants-Appellants now appeal the district court’s grant of summary judgment on Plaintiff-Appellee’s facial challenge to ALA. CODE § 15-20A-11(d)(4).

Legal Standard

An appeal may be expedited upon motion and showing of good cause. 28 U.S.C. § 1657(a) (court “shall expedite the consideration of any action . . . if good cause therefor is shown”); see also Fed. R. App. P. 27, 11th Cir. R. 34.4(f).

Argument

In this case, the Plaintiff contends that such good cause exists, and Defendants-Appellants, having reviewed its contents, do not oppose this motion.

This appeal does not require this Court to analyze (or the Parties to summarize and present) a detailed factual record. The appeal primarily concerns issues of law regarding the appropriate level of review and the standards applicable to that level. These issues have been raised and argued throughout this litigation and the parties have had opportunity to research and brief them thoroughly at the district court.

The district court has held that ALA. CODE § 15-20A-11(d)(4) is unconstitutional on its face. Under that holding, Plaintiff-Appellee is suffering an ongoing, irreparable injury to his constitutional right to reside with his own child. See, e.g., Elrod v. Burns, 427 U.S. 347, 373 (1976) (deprivation of constitutional rights “unquestionably constitutes irreparable injury”). Because Mr. Henry’s child continues to grow during the pendency of this appeal, such harm is compounding.

The State too is harmed by delay in this matter, as it must labor under uncertainty pending final resolution.

The constitutionality of state statutes is a matter of immense public importance to both parties—the public in being free from unconstitutional deprivation of liberties, and the State in achieving its legislative goals. Delay in adjudication of these issues harms both parties.

CONCLUSION

Plaintiff-Appellee, without opposition from Defendants-Appellants, respectfully requests that the Court issue a briefing schedule under which Appellants' Principal Brief is due **thirty (30) days** after the entry of this Court's Order on this Motion to Expedite or on the day it would otherwise be due under the Federal Rules of Appellate Procedure (whichever is earlier); that Appellee's Response Brief be due **ten (10) days** after submission of Appellants' Principal Brief, and that any Reply Brief be due **ten (10) days** after submission of the Appellee's Response Brief. Further, Plaintiff-Appellee, without opposition from Defendants-Appellants, respectfully requests that this matter be scheduled for oral argument before the earliest available panel.

Respectfully submitted this 31st day of January, 2024.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation set forth in Fed.R.App.P. 32(g)(1). This motion contains 564 words as computed by the Microsoft Word software used to prepare the brief.

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing utilizing the Court's CM/ECF system, which will send notice of such filing to all counsel for all parties of record.

This 31st day of January, 2024.

Respectfully Submitted,

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